

Requests for Mediation
September 2000 - August 2001

DATE REQUEST RECEIVED		DISPUTE ISSUE(S)	FILED BY	OUTCOME
1	10-9-00	IEP team communication and services	Parents	No mediation agreement reached
2	12-12-00	Services	Parent	No mediation agreement reached
3	3-6-01	IEP team communication and services	Parent	Sp Ed Unit & District declined to participate
4	4-17-01	IEP team communication and services	Parent	Sp Ed Unit & District declined to participate

Requests for Due Process Hearings
September 2000 - August 2001

DATE REQUEST RECEIVED		DISPUTE ISSUE(S)	FILED BY	OUTCOME
1	1-16-01	Services	Parent	Due Process was defaulted due to parental non-compliance
2	3-2-01	Evaluation / Services	School	Due Process withdrawn
3	4-3-01	Evaluation	School	Due Process withdrawn
4	4-10-01	Placement / Re-evaluation	Parent	Due Process withdrawn (agreement reached)
5	6-13-01	Evaluation	School	Due Process withdrawn

Requests for Complaint Investigation September 2000 - August 2001

DATE OF COMPLAINT		ISSUE(S)	VIOLATION OF IDEA FOUND?
1	10/10/00	1. Procedural Safeguards	No
2	11/15/00	1. Procedural Safeguards	Raised no issue that could be addressed
3	1/10/01	1. FAPE (services)	Withdrawn
4	1/24/01	1. Evaluation 2. Procedural Safeguards 3. FAPE (services)	Yes
5	3/15/01	1. Evaluation	No
6	3/7/01	1. Evaluation 2. Procedural Safeguards	Yes
7	3/29/01	1. Evaluation 2. Procedural Safeguards	Yes
8	4/9/01	1. Evaluation 2. FAPE (services)	No
9	4/11/01	1. FAPE (services)	Withdrawn
10	4/17/01	1. Evaluation 2. FAPE (services) 3. Procedural Safeguards	Yes
11	5/16/01	1. FAPE (services)	Yes
12	5/16/01	1. FAPE 2. Procedural Safeguards	No
13	5/16/01	1. Confidentiality	Returned to complainant*
14	7/3/01	1. FAPE 2. Procedural Safeguards	Referred to BIA

* referred to ESPB (Education Standards & Practices Board)

DPI – Special Education Complaint Management Request History

	MEDIATION	COMPLAINT	DUE PROCESS
Sept 2000 – Aug 2001	4	14	5
Sept 1999 – Aug 2000	5	16	4
Sept 1998 – Aug 1999	5	4	6

Regional Office for Civil Rights (OCR)
Section 504 Complaints filed from ND

September 2000 – August 2001

K-12 4

Post Secondary 3

DPI – SPECIAL EDUCATION
COMPLAINT SYNOPSIS
SEPTEMBER 2000 – AUGUST 2001

Note: These summaries are intended to provide information in a greatly reduced format. All complaints are decided on their unique facts. Readers are encouraged to consult the Department or other advisors before applying the conclusions indicated below to another fact situation.

1. Issue (Procedural Safeguards) & Conclusion

There was no IDEA violation limiting the disclosure of personally identifiable information where there was no link between information contained in Student's educational record and the content of a statement made by a school employee to a third party.

2. Issue (Procedural Safeguards) & Conclusion

Raised no issue that could be addressed in complaint investigation procedure.

3. Issue (FAPE) & Conclusion

Complaint alleging IDEA violation of FAPE was withdrawn by parent; no investigation, no findings.

4. Issues (Evaluation, Procedural Safeguards, FAPE) & Conclusions

There was no violation of IDEA in the school's refusal to evaluate Student for possible eligibility in the area of speech/language, where Student's three-year re-evaluation conducted within the preceding year did not identify any question of Student's speech/language functioning.

There was a violation of IDEA requirements for prior written notice of IEP meetings where existing documentation did not demonstrate compliance.

There was a violation of IDEA where goals and objectives in the IEP were not individualized to the Student and were not subject to measurable progress or lack of progress.

No violation of IDEA requirements occurred where Student's behavior intervention plan was based on Student's integrated written assessment report and contained positive behavior supports to take place at school.

The school did not fail to implement accommodations and modifications that were not in use, where IEP team members disagreed as to why the

accommodation/modification was not being used. However, the IEP team was directed to reconvene to consider revising the IEP.

Where the school offered counseling services as called for in the IEP and then allowed the services to lapse when the Student expressed a desire to stop meeting with the counselor, the school was not in violation for failing to implement the IEP. However, it was the school's responsibility to reconvene the IEP team in timely manner to address alternative positive behavior supports.

The IEP was out of compliance as the LRE justification section and Characteristics of Services section were blank.

A clerical error in the entry for disability category on the IEP document, which was corrected in a later IEP and had no effect on Student's programming, was not a violation of IDEA.

There was no violation by the school's inclusion in the IEP of a "behavior plan" that parent alleged had not been discussed, where documentation of the IEP team meeting minimally indicated team discussion of behavior incidents.

The school's failure to provide parents with progress reports indicating the Student's progress toward IEP goals and objectives was an IDEA violation.

A behavior plan that lacked positive behavior supports in the least restrictive environment failed to meet IDEA requirements. An IEP that was internally inconsistent in its approach to Student's behavior problems, because the goals and objectives conflict with the statement of Student's ability to follow school rules, was out of compliance.

Corrective actions

The Department ordered

- the IEP team reconvene to revise the IEP with the aid of a neutral facilitator;
- training for special education members of the IEP team and school administrators on IDEA requirements for procedural safeguards, goals, progress reports, positive behavior intervention plans, IEP revision, LRE justification, and collaboration between special education and regular education staff.

5. Issues (Evaluation, Procedural Safeguards) & Conclusions

The parent and the school disagreed on whether the Student met the definition of a child with a specific learning disability. There was no violation of IDEA in the school's conclusion that the Student did not meet the definition, where the Student was not experiencing adverse impact on academic performance. Here, the Student was able to be involved in and progress in the general curriculum without special education services. The school complied with IDEA requirements for parent participation in IEP team meetings and for conducting evaluations for eligibility.

6. Issues (Evaluation, Procedural Safeguards) & Conclusions

School failed to evaluate Student for eligibility in violation of IDEA. School knew that Student's academic performance was significantly impaired; that Student had a psychiatric diagnosis that could serve as the basis for eligibility; that Student was receiving ongoing psychiatric care; that Student exhibited problem behaviors at school that interfered with Student's own learning and that of others. Based on this information, the school should have initiated the referral process to the building level support team.

The parent requested an IEP for Student. The school's failure to respond either by commencing the evaluation process or by notifying the parent in writing of refusal to initiate evaluation was a violation of IDEA.

On a second issue, the Department found no violation of IDEA where the school suspended the Student for 5 days.

Corrective actions

The Department ordered

- the school to seek parental consent to evaluate;
- inservice training on the BLST process for classroom staff and administration;
- revised policies and procedures for BLST and referral for evaluation;
- school self-assessment measuring the effectiveness of the BLST/referral process.

7. Issues (Evaluation, Procedural Safeguards) & Conclusions

IDEA procedural safeguards regarding the imposition of discipline by school authorities may be applicable to a Student before the Student is found eligible for special education and related services. Here, the school failed to conduct a manifestation determination when required to do so, even though the Student was not yet eligible for special education. The Department also noted that the school was doing many things correctly, to the point of being exemplary in its procedures and documentary record of the Building Level Support Team.

Corrective actions

The Department ordered

- training for school personnel involved in the determination of disciplinary removals;
- review of discipline policies to ensure that school policies recognize the possible application of IDEA procedural safeguards to students not yet found eligible for special education.

8. Issues (Evaluation, FAPE) & Conclusions

Although the IDEA process for the Student did not result in improved academic performance or improved behavior, the school met IDEA requirements for evaluation for possible eligibility as emotionally disturbed. The IEP team acted in a timely fashion to consider possible ED eligibility after a series of other strategies and interventions to address Student's academic and behavioral difficulties had been tried without success.

The IEP team's incremental approach to managing Student's behavior problems (numerous strategies identified and implemented over the course of monthly IEP meetings) and its implementation of the Levels system were consistent with IDEA requirements for a positive behavior intervention plan.

Student's record of absences and disciplinary removals did not trigger IDEA procedural safeguards, thus there was no IDEA violation stemming from removals.

The school complied with IDEA requirements for educating a student with a disability in the least restrictive environment when the IEP team wrote the LRE justification section of the IEP, reciting interventions that had been implemented in less restrictive settings without success and addressing how the more restrictive environment would meet this Student's needs for behavioral control strategies and individualized help with language issues.

The school did not improperly leave the decision of Student's placement with the parents. Minutes of the IEP team meeting reflect team discussion of placement options, an attempt by the school to maximize parental and student participation by giving them time to reflect on the options, and plans for the team to reconvene in the near future. This approach did not violate IDEA requirements that the IEP team determine placement by team consensus.

9. Issue (FAPE) & Conclusion

Complaint alleging IDEA violation of FAPE was withdrawn by parent; no investigation, no findings.

10. Issues (Evaluation, FAPE, Procedural Safeguards) & Conclusion

Pursuant to federal regulations effective May 11, 1999, a public agency may access a family's private insurance proceeds only after the parent gives written informed consent (34 CFR sec. 300.142(f)). The school did not make informed consent disclosures to the parents when it sought to access the family's private insurance to pay for a medical evaluation in connection with the student's three-year re-evaluation. The school was found out of compliance.

A lengthy process of revising the student's IEP, punctuated by delays for a variety of reasons including parental request and engagement of a neutral facilitator

for IEP team meetings, did not constitute a violation of IDEA, where special education services were ongoing during the revision process.

Where the parents alleged discrepancy between the IEP document and the team's consensus on what services would be provided, there was no violation of IDEA because the school met IDEA procedural requirements for notice to parents and parental opportunity to participate in developing the IEP. The parents could ask to reconvene the team to revise the IEP.

The school had no duty to issue progress reports on services that were not required by the IEP.

Corrective action

The Department ordered

- the unit to adopt and implement a policy addressing unit access to a parent's private insurance proceeds consistent with the federal regulations for written informed consent and reflecting procedural safeguards stated in 34 CFR sec. 300.500(b)(1).

11. Issues (FAPE) & Conclusion

There was no violation of IDEA where the parent disputed the contents of an IEP addendum and alleged school failure to provide services that were removed from the IEP by the addendum, which was prepared after an IEP meeting. The school had complied with IDEA requirements for development of the IEP.

Regarding a different special education service, there was a violation of IDEA where the school failed to implement a service called for in the IEP. IDEA requires the school to reconvene the IEP team to consider revising the IEP where, as here, the Student may be refusing the service, and the Student is receiving failing grades in the general curriculum.

Corrective action

The Department ordered

- training for school staff who are members of the IEP team on the process for development, implementation and revision of the IEP.

12. Issues (FAPE, Procedural Safeguards) & Conclusion

The parents' questions regarding the school's actions and omissions in involving law enforcement authorities after a behavior incident, did not implicate IDEA; parents' issues were properly pursued through the school's internal grievance channels.

A statement about Student by a school employee quoted in a local newspaper article did not constitute an unconsented disclosure of personally identifiable

information, thus was not a violation of IDEA. The student's name was not disclosed. There may be a violation of IDEA confidentiality requirements even where the student's name is not disclosed, but here there was no evidence that the information disclosed would make it possible to identify the student with reasonable certainty.

IDEA permits school officials to make the determination whether to report specific conduct that may be criminal to law enforcement authorities. IDEA does not address the implications of such a report for the student's future mental health care and student's development of trust relationships with health care providers.

There was no denial of FAPE where student's IEP did not result in the success hoped for, but the IEP was developed in procedural compliance with IDEA and the IEP was reasonably calculated to permit the student to benefit more than minimally from student's educational experience.

13. Issue (Confidentiality) & Conclusion

Parent complaint was returned for clarification and referred to the ND Education Standards & Practices Board (ESPB).

14. Issues (FAPE, Procedural Safeguards) & Conclusion

Parent filed complaint; referred to Regional BIA for investigation.

What we've learned....

- The Department strongly encourages the taking and distribution of meeting minutes of IEP team meetings. Best practice calls for records of meetings that document the participation of team members and memorialize team decisions. The act of documenting focuses attention and directs team action, as well as providing a memory aid after the event. Where extensive documentation is kept and distributed to team members, disputes may be more quickly and conclusively resolved by reference to the documentation; and if not, the parties may proceed to other avenues of relief with contemporary evidence.
- Use of a cover letter to the parents reciting the inclusion of IEP documents whenever IEP documents are sent, will permit confirmation of sending (e.g., in response to parent claims "I never got ...X, Y, Z...") and improve paperwork "tracking" by both school and parents. The cover letter could be a form letter.
- IDEA procedural safeguards may be triggered by disciplinary removals. The nature of the removal must be determined in order to determine whether IDEA procedural safeguards apply in a given situation. The Department encouraged a school to re-examine its practices regarding the way in which school removals are documented in school records and how removals are communicated to parents, so as to avoid disagreements between school and parents over the nature of a student removal (e.g., parental allegations that Student who was sent home was "suspended" without following procedures for suspension).
- Disability harassment is an area of concern that has received recent attention from the U.S. Department of Education. Parental allegations that a teacher made belittling or otherwise derogatory remarks about the student may constitute a claim of disability harassment. Disability harassment is a violation of IDEA if the harassment rises to a degree that the student is denied a free appropriate public education. See OCR/OSERS Letter of July 25, 2000 (Cantu letter), p.2. A claim of disability harassment is an issue that may be investigated in the complaint procedure under 34 CFR secs. 300.660-662.
- Parents often express their perception of negative attitudes by school personnel. These perceptions may or may not be accurate from the school's point of view. Accurate or not, the school can take steps to avoid the appearance of negative attitudes. Special Education has excellent reference material available for further reading.
- School personnel statements to local new media may be gratuitously hurtful to students and their families, even if the statements do not violate IDEA confidentiality requirements. The Department cautions regular education and special education personnel to avoid making statements that serve no educational purpose and that could reasonably be foreseen to be offensive or embarrassing to students and parents. Such statements may do ongoing harm by jeopardizing the IDEA process through their tendency to undermine communication and trust between school and parent team members.